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In the Supreme Court of the United States

OCTOBER TERM, 1968

JAMES DONALD EDWARDS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a non-jury trial in the United States District Court for the Southern District of California, petitioner was convicted of wilfully failing to submit to induction into the armed forces, in violation of 50 U.S.C. App. 462. He was sentenced to imprisonment for a period of three years (R. I, 28). The court of appeals unanimously affirmed (Pet. App. A).

The facts of the case, summarized in the opinion of the court of appeals (Pet. App. A, 1-2), are not in

dispute. Petitioner registered with his local board in January 1963, and filed a classification questionnaire in April 1964 in which he claimed to be a conscientious objector. Subsequently, he completed and filed a special form for conscientious objectors. Thereafter, in June 1964, the local board classified petitioner I-A and mailed a notice of this classification to him which explained his appeal rights. No administrative appeal was taken by petitioner.

On May 20, 1965, petitioner was ordered to take an armed forces physical examination on June 11, 1965. He reported as scheduled, was examined, and was found acceptable. Subsequently, petitioner notified the local board that his name had been legally changed from James Donald Humphreys to James Donald Edwards, and requested a new notice of classification reflecting this to replace the old one. On October 25, 1965, petitioner was again classified I-A by his local board, and a notice of the classification was mailed to him shortly thereafter. No appeal was taken from this classification either.

On December 23, 1965, petitioner was ordered to report for induction on January 11, 1966. He reported to the induction center as ordered, took a pre-induction examination and completed various forms preliminary to induction. However, he thereafter refused to be inducted into the armed forces. The present indictment and his conviction for failing to submit to induction followed.

ARGUMENT

Petitioner contends that he should not be precluded from challenging his I-A classification in his criminal trial for refusing to submit to induction, despite his failure to exhaust his administrative remedies by appealing that classification within the Selective Service System. He admittedly received the notices of classification with instructions explaining his appeal rights. Indeed, he conceded at trial that he was fully aware of his right to appeal, but decided not to do so because he thought the state appeal board would deny relief (Tr. 22). There is thus no circumstance here that warrants departure from the settled principle that failure to pursue a readily available administrative appeal bars a subsequent challenge to the validity of a registrant's classification in a criminal prosecution for refusing induction into the armed forces. *E.g.*, *Falbo* v. *United States*, 320 U.S. 549; *Estep* v. *United States*, 327 U.S. 114, 123; *Kidd* v. *United States*, 386 F. 2d 422, 423 (C.A. 10); *Dunn* v. *United States*, 383 F. 2d 357 (C.A. 1), certiorari denied, 390 U.S. 982; *Noland* v. *United States*, 380 F. 2d 1016, 1017 (C.A. 10), certiorari denied, 389 U.S. 945; *Thompson* v. *United States*, 380 F. 2d 86, 88-89 (C.A. 10); *Capson* v. *United States*, 376 F. 2d 814 (C.A. 10), certiorari denied, 389 U.S. 901.[1]

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[1] Nothing in *Dickinson* v. *United States*, 346 U.S. 389, a ministerial exemption and not a conscientious objector case, is to the contrary. As the court of appeals noted, "The record contains no indication that [petitioner] ever attempted to obtain a IV-D classification [ministerial exemption] from [his] board" (Pet. App. A, 4, n. 2).

Pursuant to congressional authority, substantial administrative procedures for review of Selective Service classifications have been provided (see 32 C.F.R. 1624-1627), one purpose of which is to render frequent recourse to the courts unnecessary.[2] This is distinctly not a situation where, because of a settled interpretation or approach by the Selective Service System, it could be said that nothing might conceivably be gained by an administrative appeal. Here the whole appeal system in effect at that time was designed to develop the facts which would or would not support petitioner's claim that he was a genuine conscientious objector. Petitioner, although knowing of his right of appeal, failed to take advantage of the process available for development of the pertinent facts. Not having done so, he is in no position to claim that the Selective Service System erred with respect to the "basis in fact" for his classification, as the court below properly concluded (Pet. App. A, 2-3).

[2] Indeed, at the time of petitioner's classification, there was an especially thorough administrative process for review of claims for conscientious objector status (32 C.F.R. 1626.25(a)-(e), rescinded by Executive Order 11360, 32 Fed. Reg. 9787, 9792 (July 4, 1967)).

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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